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Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 199.

CHARLES J. GLIDDEN, Trustee,
PLAINTIFF IN ERROR,

v.

JOHN H. HARRINGTON, Collector,
DEFENDANT IN ERROR.

Brief for Defendant in Error.

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Brief for Defendant in Error.

This was an action of contract brought by the present defendant in error against the present plaintiff in error to recover a tax on personal estate assessed on the plaintiff in the year 1889.

After judgment for the plaintiff in that action the defendant in that action brings the case to this court on writ of error.

1. The principal contention of the plaintiff in error seems to be that the statutes of Massachusetts relating to the assessment of taxes, in so far as they require assessors to estimate the property of taxpayers in the absence of a list furnished by them, are repugnant to that clause of the Fourteenth Amendment to the Constitution of the United States which provides, "Nor shall any state deprive any person of . . . property without due process of law." The

provisions of the statutes of Massachusetts material to the consideration of this case are contained in the Public Statutes of Massachusetts, chapter 11, and are as follows: —

"Section 2. All property, real and personal, of the inhabitants of this state, not expressly exempted by law, shall be subject to taxation as hereinafter provided."

"Section 20. All personal estate, within or without the Commonwealth, shall be assessed to the owner in the city or town where he is an inhabitant on the first day of May, . . ."

"Section 38. Before proceeding to make an assessment, the assessors shall give seasonable notice thereof to the inhabitants of their respective places, at any of their meetings, or by posting up in their city or town one or more notifications in some public place or places, or by some other sufficient manner. Such notice shall require the inhabitants to bring in to the assessors, within a time therein specified, true lists of all their polls and personal estates not exempted from taxation, and may or may not require them to include real estate in their lists of property subject to taxation. . . ."

"Section 39. The assessors shall in all cases require a person bringing in a list to make oath that the same is true; which oath may be administered by either of the assessors."

"Section 41. They shall ascertain as nearly as possible the particulars of the personal estate, and of the real estate in possession or occupation, as owner or otherwise, of any person who has not brought in a list as required by them, and shall make an estimate there-

of at its just value, according to their best information and belief.

"Section 42. Such estimate shall be entered in the valuation, and shall be conclusive upon all persons who have not seasonably brought in lists of their estates, unless they can show a reasonable excuse for the omission, and except as provided in sections 38 and 73."

"Section 45. The assessors of each place shall at the time appointed make a fair cash valuation of all the estate, real and personal, subject to taxation therein."

"Section 69. A person aggrieved by the taxes assessed upon him may apply to the assessors for an abatement thereof; and, if he makes it appear that he is taxed at more than his just proportion, or upon an assessment of any of his property above its fair cash value, they shall make a reasonable abatement."

"Section 71. If the assessors refuse to make an abatement to a person, he may, within one month thereafter, make complaint thereof to the county commissioners by filing the same with their clerk, and if upon a hearing it appears that the complainant is overrated, the commissioners shall make such an abatement as they deem reasonable.

"Section 72. No person shall have an abatement unless he has filed with the assessors a list subscribed by him of his estate liable to taxation, and made oath that such list is full and accurate according to his best knowledge and belief. When such list is not filed within the time specified by the assessors for bringing it in, no complaint from the judgment of the assessors shall be sustained by the county commissioners, unless they are satisfied that there was good cause why

such list was not seasonably brought in, and except in cases provided for in the following section.

"Section 73. When the assessors of a city or town have given notice to the inhabitants thereof to bring in true lists of their polls and estates not exempt from taxation, in accordance with the provisions of section 38, no part of the tax assessed on personal estate to a person who did not within the time specified therefor bring in such list shall be abated unless such tax exceeds by more than fifty per cent the amount which would have been assessed to that person on personal estate if he had seasonably brought in said list; and if said tax exceeds by more than fifty per cent the said amount, the abatement shall be only of the excess above said fifty per cent: *provided* that this section shall not affect any person who can show a reasonable excuse for not seasonably bringing in such list.

"Section 74. No abatement shall be allowed to a person unless he makes application therefor within six months after the date of his tax bill."

The Facts.

The plaintiff in the state court offered evidence tending to show the following facts: —

A resolution for the assessment of taxes for the year 1889 and the appropriation of money was passed by the board of aldermen and common council of the city of Lowell; approved by the mayor on the 22d of March, 1889; and it was ordered that a copy of this resolution be furnished to the assessors on or before the 1st day of April, 1889. (Record, p. 21.)

Before proceeding to make the assessments for the year

1889, the assessors, in the latter part of April of that year, gave seasonable notice to the inhabitants of the city of Lowell by posting, in public places in the several wards of said city, notifications that they were about to assess taxes, and requiring the inhabitants to bring in to the assessors on or before June 15 of that year true lists of all their polls and personal estates not exempt from taxation. (Record, p. 6.)

Pub. Stat. c. 11, sec. 38.

George S. Cheney and Abel Wheeler of the board of assessors were appointed a committee to inquire into telephone matters for taxation. (Record, p. 8.)

On the 25th of July, 1889, it was voted by the board of assessors to tax the directors of the Erie Telephone Company as trustees $160,000 each. (Record, p. 6.)

Abel Wheeler, an assessor, was one of the committee appointed to investigate matters in reference to telephone stocks. (Record, p. 7.) In pursuance of the authority given this committee they employed an expert to look up foreign corporations, and he was directed to look up stock held by the Erie Telegraph & Telephone Company. He reported stock of that company held by individuals in Lowell and mentioned seven trustees, and among them the defendant. There was $1,600,000 worth held by ten trustees, of which the defendant was one, and to whom one tenth was assessed. (Record, p. 8.)

He delivered the tax bill as trustee personally to the defendant. The tax bill for which this action was brought was delivered some time about the first of September, 1889. (Record, p. 10.)

John E. Maguire testified that defendant was assessed as trustee of the stock known as the Erie, composed of the

Northwestern, Southwestern, and Cleveland Telephone Companies. The basis of the valuation was what the Erie telephone stock was selling for on the market. (Record, pp. 10, 11.)

Charles J. Glidden, the defendant, testified that —

> "he was a resident of the city of Lowell, and had been connected with the Erie Telegraph and Telephone Company since its organization in 1889. He was now president of the company and had formerly been its secretary and treasurer from its organization up to about a year ago when he was elected president." (Record, p. 11.)
>
> "The companies which the Erie Telephone Company owned and managed were the Southwestern Telegraph and Telephone Company, the Northwestern Telephone Exchange Company and the Cleveland Telephone Company." (Record, p. 14.)

Witness was then (in June, 1889) a shareholder in the Erie Company under the laws of New York. (Record, pp. 14, 15.)

It was agreed that the defendant did not bring in any list of property as trustee until February 24, 1890. (Record, p. 15.) It is to be noted that the list was brought in eight months and nine days after the expiration of the time assigned for bringing it in. (Record, p. 6.)

Upon the evidence it is manifest that the assessors took more than the usual pains to ascertain the amount and value of the property upon which they assessed the tax. (See Record, pp. 6, 7, 8, 9, 10.)

The Law.

"In judging what is 'due process of law' respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements or none of these, and if found to be suitable or admissible in the special case, it will be adjudged to be 'due process of law' but if found to be arbitrary, oppressive and unjust it may be declared to be not due process of law."

Davidson v. *New Orleans*, 96 U.S. 97–107.

"It has however been repeatedly decided by this court that the proceedings to raise the public revenue by levying and collecting taxes are not necessarily judicial and that 'due process of law' as applied to that subject does not imply or require the right to such notice and hearing as are considered to be essential to the validity of the proceedings and judgments of judicial tribunals. Notice by Statute is generally the only notice given, and that has been held sufficient"

Kentucky R.R. Cases, 115 U.S. 321–331.

A tax law which grants to the taxpayer a right to be heard on the assessment of his property before *final judgment* provides a due process of law for determining the valuation, although it makes no provision for a rehearing.

Pittsburg R.R. Co. v. *Backus*, 154 U.S. 421.

"Without attempting to define exactly in what due process of law consists, it is sufficient to say, that if the Supreme Court of a State has acted in consonance with the constitutional laws of a State and its own pro-

cedure it could only be in very exceptional circumstances that this court would feel justified in saying that there had been a failure of due legal process. We might ourselves have pursued a different course in this case, but that is not the test."

Allen v. *Georgia*, 166 U.S. 138.

"The manner of notice and the specific period of time in the proceedings when a party may be heard are not very material, so that reasonable opportunity is afforded before he has been deprived of his property or the lien thereon is irrevocably fixed. So it has been held that it is sufficient if the party is accorded the right of appeal or to be heard upon an application for abatement . . . or the assessment is to be enforced by a suit to which he is to be made a party."

King v. *Portland City*, 184 U.S. 61–69.

"The contentions of plaintiff in error seem to be based on the assumption that a property owner must have notice of every step of the proceedings. Such assumption is untenable." (*Wayerhaueser* v. *Minnesota*, 176 U.S. 550, and cases cited.)

Voigt v. *Detroit*, 184 U.S. 115–122.

"If the essential requisites of full notice and an opportunity to defend were present, this court will accept the interpretation given by the state court as to the regularity under the state statute of the practice pursued in the particular case."

Simon v. *Craft*, 182 U.S. 427–437.

"The due process clause in the 14th amendment to the Constitution does not necessitate that the proceedings in a state court should be by a particular mode, but only that there should be a regular course of proceedings in which notice was given of the claim asserted and an opportunity offered to defend against it."

New Orleans Water Works Co. v. *Louisiana*, 185 U.S. 336, 350.

Due process of law under New York constitution —

"need not be a legal proceeding according to the course of the common law, neither must there be a personal notice to the party whose property is in question. It is sufficient if a kind of notice is provided by which it is reasonably probable that the party proceeded against will be apprised of what is going on against him and an opportunity offered him to defend."

Happy v. *Mosher*, 48 N.Y. 313–317.

On the 20th of February, 1786, an act was passed in Massachusetts for the assessment and collection of taxes, which does not differ materially from the present tax laws of the Commonwealth.

See Stearns and Shaw's edition of the General Laws of Massachusetts, vol. i. p. 217.

In a note to the opinion of the court in *Hagar, Appt*, v. *Reclamation District No. 108*, 111 U.S. 701–713, the methods of assessing taxes in the several states are recited. It will be apparent, upon examination, that the rights of taxpayers are as carefully guarded by the laws of Massachusetts as by the laws of any other state.

Aside from all questions of law raised in this case, it is manifest that on the facts admitted by the plaintiff in error this action cannot be maintained.

On the 24th of February, 1890, more than eight months after the expiration of the time within which the plaintiff in error was required to bring in to the assessors a true list of his personal estate not exempt from taxation, he delivered to them the communication (a copy of which, marked "Exhibit G," is printed on page 21 of the transcript of record) in which under oath he admitted that —

> "There stood in his name as trustee for the Erie Telegraph and Telephone Company, a corporation under the laws of New York, two thousand shares of the capital stock of the Southwestern Telegraph and Telephone Company, . . . one hundred and forty-nine shares of the capital stock of the Cleveland Telephone Company, . . . and thirteen hundred shares of the capital stock of the Northwestern Telephone Exchange Company."

The plaintiff in error sought to escape taxation thereon upon three grounds:

First. Because "he as said trustee never had in his possession, control or management, a certificate of stock or any of them in any of said corporations;"

Second. Because "he never had any of the income, profits or proceeds arising from the same;"

Third. Because he could not "have delivered to any person any of said stock nor could he have transferred or conveyed the same, or any of the income or profits arising therefrom."

As to his first contention: The plaintiff in error having admitted that the stock on which he was assessed stood in his name on the first of May, 1889, he was rightly assessed therefor.

As to his second contention: It is a sufficient answer to say that a person owning stock in a corporation does not cease to be a stockholder when it ceases to pay dividends.

As to his third contention: The transferability of personal property is never a requisite to the taxation of such property.

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